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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 483

ANTONIO ROIG SUCRS. S. EN C., *Petitioner*

v.

THE SUGAR BOARD OF PUERTO RICO, *Respondent*

STATEMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 235 F. 2d 347-354 (1st Cir. 1956). That opinion was rendered with respect to three cases appealed from the Supreme Court of Puerto Rico. Only one of these is before this Court (No. 4959 below). The Supreme Court of Puerto Rico decided that case *per curiam* (R.A. 4959, 4960, p. 200). This *per curiam* decision is related to the Supreme Court's opinion in three other cases: (1) *Eastern Sugar Associates* v. *Sugar Board* (No. 4960 below), reprinted at R.A. 4959, 4960, pp. 182-198; (2) *Eastern Sugar Associates* v. *Sugar Board* (*Eastern Sugar Associates* v. *Colonos de Cana*, No. 4972 below), reprinted at R.A. 4972, p. 108; and (3) *Antonio Roig Sucrs.* v. *Sugar Board* (not appealed), reprinted at R.A. 4972, p. 93.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

In addition to the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Section 7 of the Sugar Act of Puerto Rico of 1951, Act. No. 426 of May 13, 1951, 5 L.P.R.A. §§ 371, *et seq.*, 376 (Pet. 38-40), cited by petitioner, this case also involves Rule 2 of the Sugar Board of Puerto Rico (Pet. 42-43).

QUESTIONS PRESENTED

May the Commonwealth of Puerto Rico, consistently with the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States, regulate the sugar industry in Puerto Rico by requiring processors ("centrals") to reimburse growers ("colonos") for their sugar cane, by paying cash rather than raw sugar, unless the colonos otherwise elect?

STATEMENT OF THE CASE

(1) This Petition for Certiorari seeks to review the affirmance by the United States Court of Appeals for the First Circuit (Pet. 19) of a judgment of the Supreme Court of the Commonwealth of Puerto Rico (R.A. 4959, 4960, p. 200),[1] which was entered on review of the Resolution of the Sugar Board of Puerto Rico (R.A. 4959, 4960, pp. 142-160).[2]

(2) The sole issue in this proceeding relates to a single provision of the comprehensive and integrated

[1] Jurisdiction of the Court of Appeals was invoked under 28 U.S.C. § 1293.

[2] Jurisdiction of the Supreme Court of Puerto Rico was invoked under Section 33 of the Sugar Act of Puerto Rico of 1951, *supra*, 5 L.P.R.A. § 402 (Pet. 40).

regulation of the sugar industry of Puerto Rico contained in the Commonwealth's Sugar Act of 1951, *supra*. The Act regulates, among other practices, the compensation paid by centrals to colonos for cane. See Sections 5, 6 and 7 of the Sugar Act of 1951, *supra* (Pet. 33-40). The particular provision at issue—Section 7, as supplemented by Rule 2 of the Sugar Board—requires the sugar centrals of Puerto Rico to liquidate the share of each colono in the raw sugar resulting from the milling of his cane in the form of cash, unless the colono expresses a preference to receive his share in sugar.

(3) The legitimate interest of the Commonwealth legislature in these matters rests on the fact (a) that sugar is the " 'vital nerve of our insular economy' ", *Antonio Roig Sucrs.* v. *Sugar Board,* R.A. 4972, p. 100, and (b) that for this reason the income and compensation of the large numbers of cane-growing colonos is a matter of vital concern to the Commonwealth, *id.* at 101-102.

(4) Section 7, as supplemented by Rule 2, represents one phase of a complex and interrelated system of federal and Commonwealth regulation of all phases of the compensation to the growers of sugarcane in Puerto Rico. Stated generally, the Puerto Rican Sugar Act, and the federal Secretary of Agriculture acting pursuant to Section 301 of the federal Sugar Act of 1948,[3] have provided that the colonos are entitled to a share—ranging from 63.5% to 68% depending on yield—of the raw sugar milled from their cane, the central retaining the remainder as its share.[4] If

[3] 61 Stat. 922, 929, 7 U.S.C. §§ 1100, *et seq.*, 1131(c)(1).

[4] Section 5, Sugar Act of Puerto Rico of 1951, 5 L.P.R.A. § 374 (Pet. 33) and, *e.g.*, 21 F.R. 333 (January 18, 1956).

the central pays the colono his share in sugar, the colono must then market the sugar himself; if it pays him in cash, the Commonwealth and federal regulations both provide that the payment is to be based on the average annual New York market price minus shipping and brokerage charges.[5] Section 6 of the Puerto Rican Sugar Act provides for the allocation between the centrals and the colonos of the costs of moving cane from the farms to the mills,[6] and Section 7 governs liquidation procedures and storage expenses for raw sugar. This body of federal and local statutes and regulations determines the income and all items of marketing cost of cane growers in Puerto Rico.

(5) The record in this case contains ample evidence of the legislative purpose and intent of the Commonwealth in wiping out the centrals' unilateral power to determine to reimburse cane growers in kind. The Sugar Board held that the colonos are not equipped to bear the responsibilities and risks of selling their share of the raw sugar milled from their cane. They "lack the preparation, ability and effective means for marketing . . . , as well as the necessary credit for the pignoration [pledging] of their sugar and for obtaining other banking facilities" (Sugar Board Finding of Fact 9, R.A. 4959, 4960, p. 150). In the past, colonos who received sugar rather than cash were often compelled to sell at prices below those which they would have realized had they received cash (Sugar Board Finding of Fact 10, R.A. 4959, 4960, p. 150). Compensation in kind thus was determined to be a harmful practice by diminishing the income of colonos and dis-

[5] Sugar Board Rule 4 (Pet. 44) and 21 F.R. 333 (January 18, 1956).

[6] See also 21 F.R. 333, § 877.8(d)(3) (January 18, 1956).

rupting the efficient marketing of sugar. Consequently, it was held to be "detrimental to such industry and to the general economy of Puerto Rico" (Sugar Board Finding of Fact 12, R.A. 4959, 4960, p. 150).

(6) The Sugar Board also determined that Section 7 and Rule 2 "do not impose an onerous economic burden on the dealings or operations of the Centrals" (Sugar Board Finding of Fact 7, R.A. 4959, 4960, p. 149). Petitioner in this case has generally liquidated in sugar, but the practice of most centrals, prior to the regulation, was to liquidate in cash. All centrals, including petitioner, sell large quantities of raw sugar after milling. Some of this raw sugar is produced from their own cane. Unlike the colonos, 81 per cent of whom are small farmers who are helpless in the sugar market if left to their own devices (Sugar Board Finding of Fact 8, R.A. 4959, 4960, pp. 149-150),[7] the centrals are well equipped with the credit and informational facilities needed to sell raw sugar.

(7) The Supreme Court of Puerto Rico rejected the petitioner's due process challenge on this basis, holding

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[7] The situation was summarized during the hearing as follows (R.A. 4959, 4960, p. 124):

"Striking this Rule No. 2 would mean that the Centrals would have the right to say to the Colonos 'You, take your sugar with you,' and as concern the Centrals now before this Board, the records show, for example, that Guanica [a central] have 1402 Colonos and that 1114 grind less than 500 tons each. Knowing, as we all here well know our people and these small Colonos, these Colonos cannot sell their sugar. They have not the ability; they have no place where to sell it; they know not the business, and neither do they know the price in the market. A ruling of this Board striking Rule No. 2 would result in that there will be many men in every Central, like Mr. Gonzalez from Vieques, purchasing sugar from every poor devil around. Sugar is a product that you cannot even sell. Sugar is delivered to the small Colono; raw sugar that he cannot sell; there is no market for it.

"This would result in a great number of persons purchasing this sugar at any price . . ."

that the statutory means of providing for cash payments to colonos had a real and substantial relation to the Commonwealth's purpose to strengthen the Puerto Rican economy, and that it did not constitute confiscation of the centrals' property (R.A. 4959, 4960, pp. 188-189). The Court of Appeals affirmed on much the same grounds (Pet. 19).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

The only argument advanced by petitioner against Section 7 and Rule 2 is that they unconstitutionally impose on it new economic burdens and compel it to enter a "new" business. This is not true, as a matter of fact. As a matter of law, the Commonwealth has a legitimate and vital local concern with the economic well being of the colonos, which the statute and Rule are lawfully designed to aid.

(1) Petitioner's complaint that it is compelled to enter a "new" business has no basis in fact. Requiring a central to pay its colonos in cash does require it to sell raw sugar. But all sugar mills in Puerto Rico sell raw sugar. The great majority of centrals in Puerto Rico market all the raw sugar they produce—colonos' as well as the centrals', and they pay the colonos in cash. All centrals, including petitioner, sell the raw sugar milled from the cane they grow, and one-third of the raw which is their share of the sugar milled from colono cane. The statute merely makes mandatory with respect to colono sugar something all Puerto Rican mills have always done—i.e., to sell raw sugar. It is not a new business or undertaking for any of them.

(2) The statute and Rule are part of a comprehensive system of economic regulation. It is elementary

that the bench mark against which such economic regulation is to be tested is whether (*Nebbia* v. *New York*, 291 U.S. 502, 537 (1934)):

> "the laws passed are seen to have a reasonable relation to a proper public purpose, and are neither arbitrary nor discriminatory".

See also *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937); *Olsen* v. *Nebraska*, 313 U.S. 236 (1941). What is valid and reasonable as economic regulation varies from case to case, and with the nature of the industry involved. "[T]he reasonableness of each regulation depends upon the relevant facts." *Nebbia* v. *New York, supra*, 291 U.S. at 525.

(3) Statutes like Section 7 requiring cash payment for goods or labor are reasonable in appropriate circumstances where justified by a legitimate local interest. See *Knoxville Iron Co.* v. *Harbison*, 183 U.S. 13 (1901); *Dayton Coal & Iron Co.* v. *Barton*, 183 U.S. 23 (1901), and *Keokee Consolidated Coke Co.* v. *Taylor*, 234 U.S. 224 (1914).

Thompson v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55 (1937), on which petitioner relies, is not in point. The "sole purpose" of the regulation there was "to compel those who may legally produce . . . to purchase gas from potential producers" who could not, because they had no marketing contracts. 300 U.S. at 77. Where the purchase requirement is not justified by a legitimate public purpose, it is, of course, invalid. But where the statute in appropriate economic circumstances touches an area of proper legislative concern and implements the general welfare, the Constitution does not prohibit it.

In a similar case, *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.,* 340 U.S. 179 (1950), for instance, this Court upheld orders of the Oklahoma Corporation Commission much like those in *Thompson,* (1) setting well-head prices for gas, and (2) requiring Cities Service, a producer-pipeline owner, to "*take gas ratably* from Peerless" at the set price. 340 U.S. at 180; emphasis supplied. Unlike the *Thompson* case, which was specifically distinguished, the orders were justified by the state's "legitimate local interest [in] preventing rapid and uneconomic dissipation of one of its chief natural resources". 340 U.S. at 187. Due process objections in such a setting "are virtually without substance". 340 U.S. at 185.[8]

(4) In this case the Commonwealth's "legitimate local interest" in ensuring fair compensation to the colonos by requiring cash payment is clear. The Commonwealth Supreme Court set forth a detailed and comprehensive analysis of the integrated provisions of the Act with respect to this case in its companion opinions in *Antonio Roig Sucrs.* v. *Sugar Board,* and *Eastern Sugar Associates* v. *Sugar Board* (R.A. 4972, pp. 93, 108). Based on the peculiar conditions of the Puerto Rican sugar industry reflected in the records before it in these cases, and the known facts on the Island of which it could take judicial notice (See R.A. 4959, 4960, pp. 188-190 and R.A. 4972, pp. 96-102, 119-121), it held:

(a) that the sugar industry was the " 'vital nerve of our insular economy' ", *Antonio Roig Sucrs.* v. *Sugar Board,* R.A. 4972, p. 100;

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[8] See also *United States* v. *Rock Royal Co-op, Inc.,* 307 U.S. 533, 573 (1939); *Railroad Commission* v. *Rowan & Nichols Oil Co.,* 310 U.S. 573, 583, n. 1 (1940).

(b) that the process of cane cultivation by the colonos "is of profound importance to the public welfare" in Puerto Rico, *id.* at 101;

(c) that it was proper, reasonable and within the orbit of public interest of the Commonwealth Government to establish minimum cane prices to the colono by legislation, because of their utter dependence on the centrals for the incomes from their crop, *ibid.*;

(d) that Section 7, as supplemented by Rule 2 of the Board, was an integral part of a statute which, along with applicable federal fair price regulations, "undertakes to regulate on an overall basis the compensation to which colonos are entitled" and therefore was a reasonable means of regulation for the implementation of the public welfare of the island, *id.* at 103-105; See also R.A. 4959, 4960, pp. 188-190.

There is no basis for a challenge to these holdings in the Record. Indeed, it is hard to believe they could be upset here under any circumstances. The courts have long recognized that sugar is a key to the Puerto Rican economy and that the compensation of the numerous small colonos on the island is a matter of vital public concern. See *Vidal* v. *Fernandez*, 104 F. 2d 606 (1st Cir. 1939), and *Roig* v. *People of Puerto Rico*, 147 F. 2d 87 (1st Cir. 1945). The Supreme Court of Puerto Rico has simply made the necessary "judicial determination" that the statute is related to these areas of legitimate legislative interest. Such a holding "renders a court functus officio" (*Nebbia* v. *New York*, *supra*, 291 U.S. at 537), and further proceedings here would serve no purpose.

(5) The due process clause of the Constitution of the United States applies to Puerto Rico. See *Balzac*

v. *People of Puerto Rico,* 258 U.S. 298, 312 (1922); *Mora* v. *Mejias,* 206 F. 2d 377, 382 (1st Cir. 1953) and 223 F. 2d 814, 816 (1st Cir. 1955). But in the case of local legislation of the Commonwealth of Puerto Rico there are special circumstances which require consideration. Puerto Rico has its own unique set of conditions peculiar to the local scene: A dependence on a single cash agricultural crop, an expanding population, limited natural resources other than climate and the energies and skills of its people, transport barriers and economic practices and institutions quite unlike anything in the states.

The Congress has taken steps to equip Puerto Rico to deal with these problems in its own way. Public Law 600, enacted on July 3, 1950, by the 81st Congress, 2d Session, 64 Stat. 319, expressly recognizing the principles of government by consent, provided for the first time for the exercise of free choice by the people of Puerto Rico as to their governmental institutions. This statute, which was "in the nature of a compact", P.L. 600, *supra,* 64 Stat. 319, between the United States and the Puerto Rican people, authorized the people of Puerto Rico, if they so desired, to accept continued association with the federal government and to devise a local government of their own choice. The statute was accepted and approved overwhelmingly in an island-wide referendum after a vigorous campaign in which opposition parties forcefully expressed their views. Thus authorized, the legislature of Puerto Rico called a convention which then drafted Puerto Rico's first Constitution, providing for an elected, republican form of government on the basic model familiar in the states, a locally appointed judiciary, and an elected Governor. This Constitution was approved by the

voters of the island, and by Congress, Public Law 447, 82d Cong., 2d Sess., 66 Stat. 327, and on July 25, 1952, the Governor proclaimed the establishment of the Commonwealth of Puerto Rico under it.

The efforts of that government to cope with, regulate and solve the special economic problems of the Island are entitled to the widest possible immunity from federal supervision. The people of Puerto Rico now enjoy the fullest measure of self-government consistent with our constitutional system. They are now able to attack these problems on a local level with local resources and skills. This is in full accord with our federal constitutional plan. See *New State Ice Co.* v. *Leibmann,* 285 U.S. 262, 280, 306-11 (1932), dissent of Brandeis, J.; *Nebbia* v. *New York,* 291 U.S. 502, 537 (1934); *Olsen* v. *Nebraska,* 313 U.S. 236, 246-247 (1941); *Day-Brite Lighting, Inc.* v. *Missouri,* 342 U.S. 421, 423 (1952). This Court has limited its own function under the Fourteenth Amendment to a determination that the local regulation is supported by a public purpose, and in the process has recognized "the propriety of deferring a good deal to the tribunals on the spot", *Laurel Hill Cemetery* v. *San Francisco,* 216 U.S. 358, 365 (1910).[9] We believe that the closest

[9] "In passing upon questions of this character . . . the matter of locality assumes an important aspect. The particular circumstances prevailing at the place or in the state where the law is to become operative,—whether the statute is really adapted, regard being had to all the different and material facts, to bring about the results desired from its passage; whether it is well calculated to promote the general and public welfare,—are all matters which the state court is familiar with; but a like familiarity cannot be ascribed to this court, assuming judicial notice may be taken of what is or ought to be generally known. For such reason this court, in cases of this kind, feels the greatest reluctance in interfering with the well-considered judgments of the courts of a state whose people are to be affected by the operation of the law. The highest

limitation of judicial review is appropriate to acts of The Commonwealth of Puerto Rico and to decisions of its Supreme Court.

The Supreme Court of Puerto Rico is aware of, and can judicially notice, the special circumstances of Puerto Rico. It is uniquely capable of determining the real limits of the general welfare and the legitimate public interests of the Commonwealth legislature, as well as the reasonableness of the means adopted to further those ends. See *Nebbia* v. *New York,* 291 U.S. 502 (1934). For these reasons, its views are entitled to special weight. In cases such as this, where the validity of Commonwealth economic regulation rests on local conditions, practices and interests, inquiry by the federal courts can rarely be justified. Absent special considerations, the determination of the local Supreme Court in favor of the constitutionality of economic legislation should be conclusive.

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court of the state in which statutes of the kind under consideration are passed is more familiar with the particular causes which led to their passage (although they may be of a public nature) and with the general situation surrounding the subject-matter of the legislation than this court can possibly be. We do not, of course, intend to say that, under such circumstances, the judgment of the state court upon the question will be regarded as conclusive, but simply that it is entitled to the very greatest respect, and will only be interfered with, in cases of this kind, where the decision is, in our judgment, plainly wrong." *Welch* v. *Swasey,* 214 U.S. 91, 105-106 (1909).

CONCLUSION

For the foregoing reasons, we believe that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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